

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
1:11CV231-RJC

TERRANCE L. JAMES-BEY, )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 STATE OF NORTH CAROLINA, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

**ORDER**

**THIS MATTER** comes before the Court on initial review of Petitioner’s “Application to Proceed in District Court Pursuant to Title 28 U.S.C., Sec. 2255” and Application to Proceed In Forma Pauperis.<sup>1</sup> (Doc. Nos. 1 and 2). For the reasons stated herein, such Application will be summarily denied.

Rule 4 of the Rules Governing Section 2255 Cases, directs sentencing courts to promptly examine motions to vacate, along with “any attached exhibits, and the record of prior proceedings . . .” in order to determine whether the petitioner is entitled to any relief. When it plainly appears from any such petition and any attached exhibits that the petitioner is not entitled to relief, the reviewing court must dismiss the motion. Rules Governing § 2255 Proceedings, Rule 4, 28 U.S.C.A. foll. § 2255. Following such directive, it plainly appears to the Court that Petitioner is not entitled to any relief on his claims.

A motion to vacate may be filed by a person in federal custody or a person in state

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<sup>1</sup> With respect to Petitioner’s Application to Proceed In Forma Pauperis, a motion to vacate does not require a filing fee; therefore, in forma pauperis status is not necessary to proceed with the case.

custody and subject to future federal custody under a judgment of the district court where the motion is filed, seeking a determination that: the judgment violates the Constitution or laws of the United States; the court lacked jurisdiction to enter the judgment; the sentence exceeded the maximum allowed by law; or the judgment or sentence is otherwise subject to collateral review. Rule 1, 28 U.S.C.A. foll. § 2255.

The Petitioner is a state prisoner, currently housed at Central Prison in Raleigh, North Carolina. N.C. DOC Public Information, <http://webapps6.doc.state.nc.us/opi/viewoffender.do?method=view&offenderID=0590137>(last visited September 13, 2011).<sup>2</sup> Petitioner filed a habeas petition pursuant to 28 U.S.C. § 2254 on June 3, 2011, which is currently pending in this Court. (See 1:11cv136). Petitioner filed the instant Motion pursuant to 28 U.S.C. § 2255 on September 6, 2011. (Doc. No. 1). Petitioner does not allege that he is subject to future custody under a judgment of this Court nor has this Court located any judgment in this Court against the Petitioner. Therefore, Petitioner's "Application to Proceed in District Court Pursuant to Title 28 U.S.C., Sec. 2255" is DISMISSED.

**IT IS, THEREFORE, ORDERED** that Petitioner's Application (Doc. No. 1) is **DISMISSED** and Petitioner's Application to Proceed In Forma Pauperis (Doc. No. 2) is DENIED as Moot.

Signed: September 21, 2011

  
Robert J. Conrad, Jr.  
Chief United States District Judge 

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<sup>2</sup> The Court may take judicial notice of matters of public record. Philips v. Pitt County Memorial Hospital, 572 F.3d 176, 180 (4<sup>th</sup> Cir. 2009) (citations omitted).

